

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL R. YEALEY,

Plaintiff,

ORDER

v.

EDWARD WALLS, et al.,

Case No. 16-cv-63-jdp

Defendants.

Plaintiff has filed a motion requesting an order from the court directing use of his release account to pay his \$53.72 initial partial filing fee, which is due on or before February 17, 2016. Plaintiff's request will be granted in part.

The language in 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in plaintiff's regular account to pay his initial partial payment, he should be allowed to use his release account to pay some or all of the assessed amount. This does not mean that plaintiff is free to ask prison officials to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$53.72 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to ensure that they are aware they should send plaintiff's initial partial payment to this court.

Since the court has not yet received plaintiff's \$53.72 initial partial payment and the deadline is February 17, 2016, the court will provide plaintiff with an enlargement of time until March 4, 2016 to pay the initial partial payment.

ORDER

IT IS ORDERED that,

1. Plaintiff Michael R. Yealey's motion for use of release account funds to pay the initial partial filing fee in this case is GRANTED IN PART. The only amount plaintiff must pay at this time is the \$53.72 initial partial payment. Before officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes.

2. Plaintiff may have until March 4, 2016, to submit a check or money order made payable to the clerk of court in the amount of \$53.72. If by March 4, 2016, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff's filing at a later date.

Entered this 10th day of February, 2016.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge